

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 ISO-00 CPR-02 TRSE-00 OMB-01 CIAE-00

INR-10 NSAE-00 RSC-01 /043 R

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R 182229Z JUN 74

FM SECSTATE WASHDC

TO AMEMBASSY MOSCOW

INFO AMCONSUL LENINGRAD

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E.O. 11652: N/A

TAGS: PFOR, UR, US

SUBJECT: SOVIET COMPLAINT ABOUT CALIFORNIA SALES TAX

REF: MOSCOW 8095

1. REFTEL COMMUNICATED ORAL STATEMENT OF DEPUTY CHIEF MFA USA DIVISION REGARDING STATE SALES TAX RELIEF FOR SOVIET CONSULATE GENERAL IN SAN FRANCISCO. THE ORAL STATEMENT MADE REFERENCE TO ARTICLE 23 OF CONSULAR CONVENTION AS THE BASIS FOR PROVIDING AN EXEMPTION. ARTICLE 23 REQUIRES AN EXEMPTION FOR "ALL TAXES OR SIMILAR CHARGES OF ANY KIND IMPOSED BY THE RECEIVING STATE OR ANY OF ITS STATES OR LOCAL GOVERNMENTS FOR THE PAYMENT OF WHICH THE OFFICER OR EMPLOYEE WOULD OTHERWISE BE LEGALLY LIABLE."

2. EMBASSY SHOULD KNOW THAT THIS ISSUE HAS BEEN RAISED PREVIOUSLY IN WASHINGTON DIRECTLY BY THE CONSULATE GEN IN SAN FRANCISCO. THE DEPARTMENT HAS RESPONDED TO THE CONSULATE GENERAL COMMUNICATING THE LEGAL INTERPRETATION THAT UNDER THE CONSULAR CONVENTION THE LANGUAGE "OF WHICH LIMITED OFFICIAL USE

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THE OFFICER OR EMPLOYEE WOULD OTHERWISE BE LEGALLY LIABLE"

DETERMINES WHETHER AN EXEMPTION MUST BE EXTENDED WITH RESPECT TO A PARTICULAR TAX. IN THE CASE OF CALIFORNIA, THE STATE SALES TAX IS AN "INDIRECT TAX" IMPOSED ON THE SALES TRANSACTION FOR WHICH THE SELLER OF THE MERCHANDISE, NOT THE BUYER, IS LEGALLY RESPONSIBLE.

3. FROM A LEGAL POINT OF VIEW, THEREFORE, THE US IS NOT FAILING TO ABIDE BY ANY TREATY OBLIGATION IN NOT SECURING AN EXEMPTION FROM THE CALIFORNIA SALES TAX FOR OFFICERS AND EMPLOYEES OF THE CONSULATE GENERAL. NOTWITHSTANDING THIS CONCLUSION, IT IS NOTED THAT AN EXEMPTION FROM THE CALIFORNIA SALES TAX FOR DIPLOMATIC AND CONSULAR PERSONNEL HAS BEEN RAISED WITH CALIFORNIA STATE AUTHORITIES IN THE PAST AND THE DEPARTMENT INTENDS TO EXAMINE FURTHER THE WHOLE QUESTION OF "DIRECT VERSUS "INDIRECT" SALES TAXES AS THAT CHARACTERIZATION RELATES TO INTERNATIONAL LAW PRINCIPLES. IT IS POSSIBLE THEREFORE THAT THIS FURTHER REVIEW WILL PRODUCE A CHANGE IN CURRENT POLICY; HOWEVER, AT THE MOMENT, THE OPINION PREVIOUSLY COMMUNICATED TO THE SOVIET GOVERNMENT ON THIS QUESTION MUST STAND. SISCO

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TAXES, DIPLOMATIC PROTESTS, CONSULAR AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: WorrelSW
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE130363
Document Source: CORE
Document Unique ID: 00
Drafter: HORACE F. SHAMWELL, JR.
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740159-0769
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740634/aaaabdee.tel
Line Count: 81
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: MOSCOW 8095
Review Action: RELEASED, APPROVED
Review Authority: WorrelSW
Review Comment: n/a
Review Content Flags:
Review Date: 05 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 JUN 2002 by kelleyw0>; APPROVED <18 MAR 2003 by WorrelSW>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SOVIET COMPLAINT ABOUT CALIFORNIA SALES TAX
TAGS: PFOR, UR, US
To: MOSCOW
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005